

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 415**

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**Introduced by Assembly Member Logue**

February 14, 2011

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~~An act to amend Section 14132.72 of the~~ *An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: telehealth.

Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. *Existing law requires a health care practitioner, as defined, to obtained verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing law provides that health care service plans and health insurers shall*

*not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.*

*This bill would delete the provisions regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined, and for the payment of telehealth services by health care service plans and health insurers. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.*

Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is provided by telehealth, as defined. ~~The bill would prescribe the rate of reimbursement for covered services provided by telehealth and would provide that reimbursement for telehealth interactions would include reasonable compensation to the health care provider at the originating site for the transmission cost incurred during the delivery of health care services.~~

*Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.*

*This bill would delete the repeal of the above-described authorization.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. This act shall be known, and may be cited, as the*  
2     *Telehealth Advancement Act of 2011.*

3     *SEC. 2. The Legislature finds and declares all of the following:*

4     *(a) Lack of primary care providers, specialty providers, and*  
5     *transportation continue to be significant barriers to access to*  
6     *health services in medically underserved rural and urban areas.*

7     *(b) Parts of California have difficulty attracting and retaining*  
8     *health professionals, as well as supporting local health facilities*  
9     *to provide a continuum of health care.*

10    *(c) Many health care providers in medically underserved areas*  
11    *are isolated from mentors, colleagues, and the information*  
12    *resources necessary to support them personally and professionally.*

13    *(d) It is the intent of the Legislature to create a parity of*  
14    *telehealth with other health care delivery modes, to actively*  
15    *promote telehealth as a tool to advance stakeholders' goals*  
16    *regarding health status and health system improvement, and to*  
17    *create opportunities and flexibility for telehealth to be used in new*  
18    *models of care and system improvements.*

19    *(e) Telehealth is a mode of delivering health care services and*  
20    *public health utilizing information and communication technologies*  
21    *to enable the diagnosis, consultation, treatment, education, care*  
22    *management, and self-management of patients at a distance from*  
23    *health care providers.*

24    *(f) Telehealth is part of a multifaceted approach to address the*  
25    *problem of inadequate provider distribution and the development*  
26    *of health systems in medically underserved areas by improving*  
27    *communication capabilities and providing convenient access to*  
28    *up-to-date information, consultations, and other forms of support.*

29    *(g) The use of information and telecommunication technologies*  
30    *to deliver health services has the potential to reduce costs, improve*  
31    *quality, change the conditions of practice, and improve access to*  
32    *health care, particularly in rural and other medically underserved*  
33    *areas.*

34    *(h) Telehealth will assist in maintaining or improving the*  
35    *physical and economic health of medically underserved*  
36    *communities by keeping the source of medical care in the local*  
37    *area, strengthening the health infrastructure, and preserving health*  
38    *care-related jobs.*

1 (i) Consumers of health care will benefit from telehealth in many  
2 ways, including expanded access to providers, faster and more  
3 convenient treatment, better continuity of care, reduction of lost  
4 work time and travel costs, and the ability to remain with support  
5 networks.

6 (j) It is the intent of the Legislature that the fundamental health  
7 care provider-patient relationship can not only be preserved, but  
8 can also be augmented and enhanced, through the use of telehealth  
9 as a tool to be integrated into practices.

10 (k) Without the assurance of payment and the resolution of legal  
11 and policy barriers, the full potential of telehealth will not be  
12 realized.

13 SEC. 3. Section 2290.5 of the Business and Professions Code  
14 is repealed.

15 2290.5. (a) (1) For the purposes of this section, “telemedicine”  
16 means the practice of health care delivery, diagnosis, consultation,  
17 treatment, transfer of medical data, and education using interactive  
18 audio, video, or data communications. Neither a telephone  
19 conversation nor an electronic mail message between a health care  
20 practitioner and patient constitutes “telemedicine” for purposes of  
21 this section.

22 (2) For purposes of this section, “interactive” means an audio,  
23 video, or data communication involving a real time (synchronous)  
24 or near real time (asynchronous) two-way transfer of medical data  
25 and information.

26 (b) For the purposes of this section, “health care practitioner”  
27 has the same meaning as “licentiate” as defined in paragraph (2)  
28 of subdivision (a) of Section 805 and also includes a person  
29 licensed as an optometrist pursuant to Chapter 7 (commencing  
30 with Section 3000).

31 (c) Prior to the delivery of health care via telemedicine, the  
32 health care practitioner who has ultimate authority over the care  
33 or primary diagnosis of the patient shall obtain verbal and written  
34 informed consent from the patient or the patient’s legal  
35 representative. The informed consent procedure shall ensure that  
36 at least all of the following information is given to the patient or  
37 the patient’s legal representative verbally and in writing:

38 (1) The patient or the patient’s legal representative retains the  
39 option to withhold or withdraw consent at any time without  
40 affecting the right to future care or treatment nor risking the loss

1 or withdrawal of any program benefits to which the patient or the  
2 patient's legal representative would otherwise be entitled.

3 (2) ~~A description of the potential risks, consequences, and~~  
4 ~~benefits of telemedicine.~~

5 (3) ~~All existing confidentiality protections apply.~~

6 (4) ~~All existing laws regarding patient access to medical~~  
7 ~~information and copies of medical records apply.~~

8 (5) ~~Dissemination of any patient identifiable images or~~  
9 ~~information from the telemedicine interaction to researchers or~~  
10 ~~other entities shall not occur without the consent of the patient.~~

11 (d) ~~A patient or the patient's legal representative shall sign a~~  
12 ~~written statement prior to the delivery of health care via~~  
13 ~~telemedicine, indicating that the patient or the patient's legal~~  
14 ~~representative understands the written information provided~~  
15 ~~pursuant to subdivision (a), and that this information has been~~  
16 ~~discussed with the health care practitioner, or his or her designee.~~

17 (e) ~~The written consent statement signed by the patient or the~~  
18 ~~patient's legal representative shall become part of the patient's~~  
19 ~~medical record.~~

20 (f) ~~The failure of a health care practitioner to comply with this~~  
21 ~~section shall constitute unprofessional conduct. Section 2314 shall~~  
22 ~~not apply to this section.~~

23 (g) ~~All existing laws regarding surrogate decisionmaking shall~~  
24 ~~apply. For purposes of this section, "surrogate decisionmaking"~~  
25 ~~means any decision made in the practice of medicine by a parent~~  
26 ~~or legal representative for a minor or an incapacitated or~~  
27 ~~incompetent individual.~~

28 (h) ~~Except as provided in paragraph (3) of subdivision (c), this~~  
29 ~~section shall not apply when the patient is not directly involved in~~  
30 ~~the telemedicine interaction, for example when one health care~~  
31 ~~practitioner consults with another health care practitioner.~~

32 (i) ~~This section shall not apply in an emergency situation in~~  
33 ~~which a patient is unable to give informed consent and the~~  
34 ~~representative of that patient is not available in a timely manner.~~

35 (j) ~~This section shall not apply to a patient under the jurisdiction~~  
36 ~~of the Department of Corrections or any other correctional facility.~~

37 (k) ~~This section shall not be construed to alter the scope of~~  
38 ~~practice of any health care provider or authorize the delivery of~~  
39 ~~health care services in a setting, or in a manner, not otherwise~~  
40 ~~authorized by law.~~

1     *SEC. 4. Section 2290.5 is added to the Business and Professions*  
2     *Code, to read:*

3     2290.5. (a) *For purposes of this division, the following*  
4     *definitions shall apply:*

5     (1) *“Asynchronous store and forward” means the transmission*  
6     *of a patient’s medical information from an originating site to the*  
7     *health care provider at a distant site without the presence of the*  
8     *patient.*

9     (2) *“Distant site” means a site where a health care provider*  
10    *who provides health care services is located while providing these*  
11    *services via a telecommunications system.*

12    (3) *“Health care provider” means a person who is licensed*  
13    *under this division.*

14    (4) *“Originating site” means a site where a patient is located*  
15    *at the time health care services are provided via a*  
16    *telecommunications system or where the asynchronous store and*  
17    *forward transfer occurs.*

18    (5) *“Telehealth” means the mode of delivering health care*  
19    *services and public health via information and communication*  
20    *technologies to facilitate the diagnosis, consultation, treatment,*  
21    *education, care management, and self-management of a patient’s*  
22    *health care while the patient is at the originating site and the health*  
23    *care provider is at a distant site. Telehealth facilitates patient*  
24    *self-management and caregiver support for patients and includes*  
25    *synchronous interactions and asynchronous store and forward*  
26    *transfers.*

27    (b) *This section shall not be construed to alter the scope of*  
28    *practice of any health care provider.*

29    (c) *All laws regarding the confidentiality of health care*  
30    *information and a patient’s rights to his or her medical information*  
31    *shall apply to telehealth interactions.*

32    *SEC. 5. Section 1374.13 of the Health and Safety Code is*  
33    *repealed.*

34    ~~1374.13. (a) It is the intent of the Legislature to recognize the~~  
35    ~~practice of telemedicine as a legitimate means by which an~~  
36    ~~individual may receive medical services from a health care provider~~  
37    ~~without person-to-person contact with the provider.~~

38    ~~(b) For the purposes of this section, the meaning of~~  
39    ~~“telemedicine” is as defined in subdivision (a) of Section 2290.5~~  
40    ~~of the Business and Professions Code.~~

1 ~~(e) On and after January 1, 1997, no health care service plan~~  
2 ~~contract that is issued, amended, or renewed shall require~~  
3 ~~face-to-face contact between a health care provider and a patient~~  
4 ~~for services appropriately provided through telemedicine, subject~~  
5 ~~to all terms and conditions of the contract agreed upon between~~  
6 ~~the enrollee or subscriber and the plan. The requirement of this~~  
7 ~~subdivision shall be operative for health care service plan contracts~~  
8 ~~with the Medi-Cal managed care program only to the extent that~~  
9 ~~both of the following apply:~~

10 ~~(1) Telemedicine services are covered by, and reimbursed~~  
11 ~~under, the Medi-Cal fee-for-service program, as provided in~~  
12 ~~subdivision (e) of Section 14132.72.~~

13 ~~(2) Medi-Cal contracts with health care service plans are~~  
14 ~~amended to add coverage of telemedicine services and make any~~  
15 ~~appropriate capitation rate adjustments.~~

16 ~~(d) Health care service plans shall not be required to pay for~~  
17 ~~consultation provided by the health care provider by telephone or~~  
18 ~~facsimile machines.~~

19 *SEC. 6. Section 1374.13 is added to the Health and Safety*  
20 *Code, to read:*

21 *1374.13. (a) For the purposes of this section, the definitions*  
22 *in subdivision (a) of Section 2290.5 of the Business and Professions*  
23 *Code shall apply.*

24 *(b) It is the intent of the Legislature to recognize the practice*  
25 *of telehealth as a legitimate means by which an individual may*  
26 *receive health care services from a health care provider without*  
27 *in-person contact with the health care provider.*

28 *(c) No health care service plan shall require that in-person*  
29 *contact occur between a health care provider and a patient before*  
30 *payment is made for the covered services appropriately provided*  
31 *through telehealth, and every health care service plan shall adopt*  
32 *payment policies consistent with this section to compensate health*  
33 *care providers who provide covered health care services through*  
34 *telehealth, subject to the terms and conditions of the contract*  
35 *entered into between the enrollee or subscriber and the health*  
36 *care service plan.*

37 *(d) The health care service plan shall not limit the type of setting*  
38 *where services are provided for the patient or by the health care*  
39 *provider.*

1     (e) *The requirements of this subdivision shall also be operative*  
2 *for health care service plan contracts with the Medi-Cal managed*  
3 *care program.*

4     SEC. 7. *Section 10123.85 of the Insurance Code is repealed.*

5     10123.85. ~~(a) It is the intent of the Legislature to recognize~~  
6 ~~the practice of telemedicine as a legitimate means by which an~~  
7 ~~individual may receive medical services from a health care provider~~  
8 ~~without person-to-person contact with the provider.~~

9     ~~(b) For the purposes of this section, the meaning of~~  
10 ~~“telemedicine” is as defined in subdivision (a) of Section 2290.5~~  
11 ~~of the Business and Professions Code.~~

12     ~~(c) On and after January 1, 1997, no disability insurance contract~~  
13 ~~that is issued, amended, or renewed for hospital, medical, or~~  
14 ~~surgical coverage shall require face-to-face contact between a~~  
15 ~~health care provider and a patient for services appropriately~~  
16 ~~provided through telemedicine, subject to all terms and conditions~~  
17 ~~of the contract agreed upon between the policyholder or~~  
18 ~~contractholder and the insurer.~~

19     ~~(d) Disability insurers shall not be required to pay for~~  
20 ~~consultation provided by the health care provider by telephone or~~  
21 ~~facsimile machines.~~

22     SEC. 8. *Section 10123.85 is added to the Insurance Code, to*  
23 *read:*

24     10123.85. (a) *For purposes of this section, the definitions in*  
25 *subdivision (a) of Section 2290.5 of the Business and Professions*  
26 *Code shall apply.*

27     (b) *It is the intent of the Legislature to recognize the practice*  
28 *of telehealth as a legitimate means by which an individual may*  
29 *receive health care services from a health care provider without*  
30 *in-person contact with the health care provider.*

31     (c) *No health insurer shall require that in-person contact occur*  
32 *between a health care provider and a patient before payment is*  
33 *made for the services appropriately provided through telehealth,*  
34 *and every health insurer shall adopt payment policies consistent*  
35 *with this section to compensate health care providers who provide*  
36 *covered health care services through telehealth, subject to the*  
37 *terms and conditions of the contract entered into between the*  
38 *policyholder or contract holder and the insurer.*

39     (d) *The health insurer shall not limit the type of setting where*  
40 *services are provided for the patient or by the health care provider.*

1     SECTION 1.

2     SEC. 9. Section 14132.72 of the Welfare and Institutions Code  
3 is amended to read:

4     14132.72. ~~(a) For purposes of this section, the following~~  
5 definitions shall apply:

6     (1) ~~“Asynchronous store and forward” means the transmission~~  
7 ~~of a patient’s medical information from an originating site to the~~  
8 ~~health care provider at a distant site without the presence of the~~  
9 ~~patient.~~

10    (2) ~~“Distant site” means a site where a health care provider who~~  
11 ~~provides health care services is located while providing these~~  
12 ~~services via a telecommunications system.~~

13    (3) ~~“Health care provider” has the same meaning as “licentiate,”~~  
14 ~~as defined in paragraph (2) of subdivision (a) of Section 805 of~~  
15 ~~the Business and Professions Code, and also includes a person~~  
16 ~~licensed as an optometrist pursuant to Chapter 7 (commencing~~  
17 ~~with Section 3000) of the Business and Professions Code.~~

18    (4) ~~“Originating site” means a site where a patient is located~~  
19 ~~while a synchronous store and forward occurs and health care~~  
20 ~~services are provided via a telecommunications system.~~

21    (5) ~~“Telehealth” means the process of delivering health care~~  
22 ~~services via information and communication technologies to~~  
23 ~~facilitate the diagnosis, consultation, treatment, education, care~~  
24 ~~management, and self-management of a patients’ health care while~~  
25 ~~the patient is at the originating site and the health care provider is~~  
26 ~~at a distant site. Telehealth facilitates patient self-management and~~  
27 ~~caregiver support for patients and includes synchronous interactions~~  
28 ~~and asynchronous store and forward transfers.~~

29     14132.72. *(a) For purposes of this section, the definitions in*  
30 *subdivision (a) of Section 2290.5 of the Business and Professions*  
31 *Code shall apply.*

32    (b) It is the intent of the Legislature to recognize the practice  
33 of telehealth as a legitimate means by which an individual may  
34 receive health care services from a health care provider without  
35 in-person contact with the provider.

36    (c) In-person contact between a health care provider and a  
37 patient shall not be required under the Medi-Cal program for  
38 services appropriately provided through telehealth.

1 (d) The department shall not require a health care provider to  
2 document a barrier to an in-person visit for Medi-Cal coverage of  
3 services provided via telehealth.

4 ~~(e) The reimbursement rate for Medi-Cal covered services~~  
5 ~~provided by telehealth shall be the lower of the usual and~~  
6 ~~customary rate charged for that service or the fee schedule amount~~  
7 ~~the program pays for the same service when provided in an~~  
8 ~~in-person visit with the patient.~~

9 ~~(f) The department shall not limit the type of setting where~~  
10 ~~services are provided for the patient or health care provider when~~  
11 ~~reimbursing the provider at both the distant site and the originating~~  
12 ~~site.~~

13 ~~(g) Reimbursement for telehealth visits shall include reasonable~~  
14 ~~compensation to the health care provider at the originating site for~~  
15 ~~the transmission cost incurred during the delivery of health care~~  
16 ~~services.~~

17 *(e) The department shall not limit the type of setting where*  
18 *services are provided for the patient or by the health care provider.*

19 ~~(h)~~

20 (f) Notwithstanding Chapter 3.5 (commencing with Section  
21 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
22 the department may implement, interpret, and make specific this  
23 section by means of all-county letters, provider bulletins, and  
24 similar instructions.

25 *SEC. 10. Section 14132.725 of the Welfare and Institutions*  
26 *Code is amended to read:*

27 14132.725. (a) Commencing July 1, 2006, to the extent that  
28 federal financial participation is available, face-to-face contact  
29 between a health care provider and a patient shall not be required  
30 under the Medi-Cal program for teleophthalmology and  
31 teledermatology by store and forward. Services appropriately  
32 provided through the store and forward process are subject to  
33 billing and reimbursement policies developed by the department.

34 (b) For purposes of this section, “teleophthalmology and  
35 teledermatology by store and forward” means an asynchronous  
36 transmission of medical information to be reviewed at a later time  
37 by a physician at a distant site who is trained in ophthalmology or  
38 dermatology or, for teleophthalmology, by an optometrist who is  
39 licensed pursuant to Chapter 7 (commencing with Section 3000)  
40 of Division 2 of the Business and Professions Code, where the

1 physician or optometrist at the distant site reviews the medical  
2 information without the patient being present in real time. A patient  
3 receiving teleophthalmology or teledermatology by store and  
4 forward shall be notified of the right to receive interactive  
5 communication with the distant specialist physician or optometrist,  
6 and shall receive an interactive communication with the distant  
7 specialist physician or optometrist, upon request. If requested,  
8 communication with the distant specialist physician or optometrist  
9 may occur either at the time of the consultation, or within 30 days  
10 of the patient's notification of the results of the consultation. If the  
11 reviewing optometrist identifies a disease or condition requiring  
12 consultation or referral pursuant to Section 3041 of the Business  
13 and Professions Code, that consultation or referral shall be with  
14 an ophthalmologist or other appropriate physician and surgeon, as  
15 required.

16 (c) Notwithstanding Chapter 3.5 (commencing with Section  
17 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
18 the department may implement, interpret, and make specific this  
19 section by means of all-county letters, provider bulletins, and  
20 similar instructions.

21 (d) On or before January 1, 2008, the department shall report  
22 to the Legislature the number and type of services provided, and  
23 the payments made related to the application of store and forward  
24 telemedicine as provided, under this section as a Medi-Cal benefit.

25 ~~(e) The health care provider shall comply with the informed~~  
26 ~~consent provisions of subdivisions (c) to (g), inclusive, of, and~~  
27 ~~subdivisions (i) and (j) of, Section 2290.5 of the Business and~~  
28 ~~Professions Code when a patient receives teleophthalmology or~~  
29 ~~teledermatology by store and forward.~~

30 ~~(f) This section shall remain in effect only until January 1, 2013,~~  
31 ~~and as of that date is repealed, unless a later enacted statute, that~~  
32 ~~is enacted before January 1, 2013, deletes or extends that date.~~

33 *SEC. 11. No reimbursement is required by this act pursuant*  
34 *to Section 6 of Article XIII B of the California Constitution because*  
35 *the only costs that may be incurred by a local agency or school*  
36 *district will be incurred because this act creates a new crime or*  
37 *infraction, eliminates a crime or infraction, or changes the penalty*  
38 *for a crime or infraction, within the meaning of Section 17556 of*  
39 *the Government Code, or changes the definition of a crime within*

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

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